IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6483 OF 2004

1. Gundasheb Ramu Ambi,
and ors. .. Petitioners

Vs

1. Shankar Babu Tashildar
and ors. .. Respondents

Mr S.S.Patwardhan, for the petitioners.

CORAM : D.B.BHOSALE, J.

DATE : MAY 02, 2005.

P.C.

1. Heard the learned counsel for the petitioners.

2. By this writ petition under Article 227 of the Constitution, the petitioners have impugned the order dated 15.6.2004 passed by the learned District Judge, Sangli, by which the application filed by the petitioners under Order 26 Rule 9 of the Code of Civil Procedure seeking appointment of the Court Commissioner has been rejected. The suit was filed for injunction restraining the respondents from passing through the land of the petitioners and direction to the respondents to use the road in existence on the western side of their property. The suit was dismissed by the trial Court by judgment and

order dated 18.12.1993. In appeal the petitioners filed an application Exhibit-17 seeking appointment of the court commissioner for fixing boundaries. I perused the impugned order and in particular paragraph 4 thereof. Considering the reasons recorded by the learned District Judge as also the nature of dispute, in my opinion, the application seeking appointment of the Court Commissioner for fixing boundaries was rightly rejected. Admittedly, the road in dispute is in existence and it was in existence since prior to filing of the suit. Whether the public road in existence passes through the property of the petitioners or not was not the issue before the Court. I find no infirmity in the order impugned. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)

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